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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,306	10/01/2002	Kenneth George Jordan	13436-1	5734
23676	7590	11/15/2004		
SHELDON & MAK, INC 225 SOUTH LAKE AVENUE 9TH FLOOR PASADENA, CA 91101				
			EXAMINER NATNITHITHADHA, NAVIN	
			ART UNIT 3736	PAPER NUMBER

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/065,306	<b>Applicant(s)</b> JORDAN, KENNETH GEORGE	
	<b>Examiner</b> Navin Natnithithadha	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claim 4 have been considered but are moot in view of the new ground(s) of rejection.
2. In regards to the Rejection of Claims 1-5, 7, 10, and 11 under 35 U.S.C. 101 for Double Patenting, the Applicant's submission of "Request for Certificate of Correction" in U.S. Patent No. 6,510,340 requesting that claims 15-22 be deleted has not been granted. Therefore, the rejection of claims 1-5, 7, 10, and 11 under 35 U.S.C. 101 is MAINTAINED. This rejection will be withdrawn upon approval of the "Request for Certificate of Correction" in U.S. Patent No. 6,510,340.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5, 7, 10, 11, 14, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Kumar et al, US 6,416,471 B1.

In regards to claim 1, Kumar teaches an acquisition unit (remote monitoring station) 50 for use by an operator (user) (see col. 8, lines 19-30), comprising: a parameter storage (patient database) 110 for storing sensor parameter (settings) data (see fig. 11 and col. 28, lines 45-57); and an access module (security system) 124 coupled to the parameter storage 110 for limiting access by the operator to the parameter storage 110 (see col. 29, lines 51-58). Kumar teaches the remote monitoring station 50 acquires ECG data. However, Kumar also teaches that the remote monitoring station 50 is capable of acquiring EEG data (see col. 8, lines 22-28). Therefore, the applicant's claim is not novel over Kumar.

As to claim 2, Kumar teaches a generation module (analyzer) 126 coupled to the parameter storage 110, and a user interface 116 coupled to the access module 124 and the generation module 126 (see fig. 11 and col. 29, lines 40-62).

As to claim 3, Kumar teaches a communications module 40/52/60 (telephone link or server) coupled to the parameter storage for remote access to the parameter storage 110 (see figs. 5A, 5B, and 11).

In regards to claim 4, Kumar teaches a system comprising: an acquisition unit (remote monitoring station) 50 (see col. 8, lines 19-30); a network of readers (see fig. 5A); and a communications network (telephone link) 40; wherein parameters (settings) of the acquisition unit are controllable by the readers (see col. 29, lines 40-48). Kumar teaches the remote monitoring station 50 acquires ECG data. However, Kumar also

teaches that the remote monitoring station 50 is capable of acquiring EEG data (see col. 8, lines 22-28). Therefore, the applicant's claim is not novel over Kumar.

As to claims 5 and 7, the subject matter in these claims are rejected for the same reasons as discussed for claims 1-3.

In regards to claim 10, Kumar teaches a method for obtaining EEG data (see col. 8, line 25), comprising: creating a database 110 (see fig. 11); storing the database on acquisition unit 30 (see fig. 5A); limiting access to the database 110 by operators of the acquisition unit (user interface 116) (see col. 29, lines 51-58); permitting access to the database by remote operator (system maintenance user interface 118) (see col. 29, lines 30-50); and generating EEG data using the database (see col. 28, lines 58-67, and col. 29, lines 59-65).

As to claim 11, Kumar teaches selecting a network of readers 50; and transmitting data to one of the plurality of readers 50 (see fig. 5A).

In regards to claims 14 and 15, Kumar teaches a system (see fig. 5A) comprising: one or more acquisition units 30; a network of readers 50; and a communications network 40/60, wherein the network operates on either a one to many relationship or many to many relationship.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 6, 8, 9, 12, and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,510,340 B1 in view of Kumar et al, U.S. Patent No. 6,416,471 B1.

The subject matter of claims 6, 8, 9, 12, and 13 was taught in claim 1 of U.S. Patent No. 6,510,340 B1. Kumar teaches the subject matter claims 4, 5, and 7 as discussed in the above 35 U.S.C. 102(e) rejection. Since Kumar teaches that the remote monitoring station 50 is capable of acquiring EEG data (see col. 8, lines 22-28), system or device such as Kumar's would be beneficial to communicate EEG data to a remote facility in a secured and efficient manner. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teachings of Kumar with the teachings of the applicant's claimed invention.

### **Conclusion**

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (703) 305-2445. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Navin Natnithithadha  
Patent Examiner  
GAU 3736  
November 3, 2004



ROBERT L. NASSER  
PRIMARY EXAMINER